

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1119

AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-19-2-2, AS ADDED BY P.L.27-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. The following transactions are exempt from the requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:

- (1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.
- (2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this article, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:
 - (A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
 - (B) the security is sold at a price reasonably related to its

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current market price;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this article or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) an audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) any one (1) of the following requirements is met:

(i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System.

(ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940.

(iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years.

(iv) The issuer of the security has total assets of at least two million dollars (\$2,000,000) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization.



- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System.
- (4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).
- (5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security that:
 - (A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or
 - (B) has a fixed maturity or a fixed interest or dividend, if:
 - (i) a default has not occurred during the current fiscal year or within the three (3) previous fiscal years, or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and
 - (ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.
- (6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article effecting an unsolicited order or offer to purchase.
- (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this article.
- (8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others.
- (9) A transaction in a security, whether or not the security or



transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the commissioner after a hearing.

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

- (A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
- (B) a general solicitation or general advertisement of the transaction is not made; and
- (C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this article as a broker-dealer or as an agent.

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(13) A sale or offer to sell to:

- (A) an institutional investor;
- (B) a federal covered investment adviser; or
- (C) any other person exempted by rule adopted or order issued under this article.

(14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

- (A) not more than twenty-five (25) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in subdivision (13);
- (B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;
- (C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this article or an agent registered under this article for soliciting a prospective purchaser in this state; and
- (D) the issuer reasonably believes that all the purchasers in this state, other than those designated in subdivision (13), are purchasing for investment.



(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR 230.165); and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

(17) An offer to sell, but not a sale of, a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this article, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this article; and

(C) a stop order of which the offeror is aware has not been issued by the commissioner under this article and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

(19) A rescission offer, sale, or purchase under IC 23-19-5-10.

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this article.

(21) Employees' stock purchase, savings, option, profit-sharing,



pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

- (A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;
- (B) family members who acquire such securities from those persons through gifts or domestic relations orders;
- (C) former employees, directors, general partners, trustees, officers, consultants, and advisers if those individuals were employed by or providing services to the issuer when the securities were offered; and
- (D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations.

(22) A transaction involving:

- (A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;
- (B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or
- (C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162).

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this article, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subdivision or by rule adopted or order issued under this article; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than



one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subdivision or by rule adopted or order issued under this article, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subdivision, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with this article, the commissioner, by rule adopted or order issued under this article, may revoke the designation of a securities exchange under this subdivision, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

(24) An offer to sell or a sale of a security of an issuer under an offering made and completed solely within Indiana, if:

(A) the transaction is part of a single issue in which:

- (i) not more than twenty-five (25) purchasers are present in Indiana during any twelve (12) consecutive months, other than those designated in subdivision (13);**
- (ii) general solicitation or general advertising is not made in connection with the offer to sell or the sale of the security;**
- (iii) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this article, or to an agent registered under this article, for soliciting a prospective purchaser in Indiana; and**
- (iv) the issuer reasonably believes that all the purchasers in Indiana, other than those designated in subdivision (13), are purchasing for investment; and**

(B) the issuer:

- (i) is not a registered securities broker-dealer; and**
- (ii) does not sell issue by or through a registered securities broker-dealer; and**

(C) the issuer files a notice of the issuer's intent to sell a security in accordance with this subdivision on a form prescribed by the commissioner.

The commissioner may require the issuer to furnish any additional information considered necessary by the commissioner to determine the issuer's qualifications.



(25) An offer to sell or a sale of a security of an issuer, if the following apply:

(A) The transaction is part of a single issue in which:

- (i) the offer or sale is made in compliance with 17 CFR 230.504, 17 CFR 230.505, and 17 CFR 230.506, including any offer or sale made exempt by the application of 17 CFR 508(a);**
- (ii) the issuer is required to submit a notice filing on a Form D not later than fifteen (15) days after the first sale of securities in this state; and**
- (iii) by submitting the notice described in item (ii), the issuer agrees, upon written request by the commissioner, to furnish to the commissioner any information the issuer furnished to offerees.**

(B) For offerings made in compliance with 17 CFR 230.504, no commission, fee, or other remuneration is paid or given, directly or indirectly, to any broker-dealer for soliciting any prospective purchaser in this state unless the broker-dealer is appropriately registered under this article. It is a defense to a violation of this clause if the issuer sustains the burden of proof that the issuer did not know and, in the exercise of reasonable care could not have known, that the person who received the commission, fee, or other remuneration was not properly registered.

(C) In all sales to purchasers other than those described in subdivision (13) for offerings made in compliance with 17 CFR 230.504, at least one (1) of the following is satisfied:

- (i) The investment is suitable for the purchaser upon the basis of facts, if any facts are disclosed by the purchaser, as to the purchaser's other securities holdings, financial situation, and needs. For purposes of this item only, it is presumed that, if the investment does not exceed ten percent (10%) of the investor's net worth, the investment is suitable.**
- (ii) The purchaser, either alone or with the purchaser's representative or representatives, has the knowledge and experience in financial and business matters that demonstrate that the purchaser is capable of evaluating the merits and risks of the prospective investment.**

(26) Subject to section 2.4 of this chapter, an offer to sell or a sale of a security by an issuer in a transaction that meets all the following requirements:



- (A) The sale of the security is made only to a person who:**
 - (i) is; or**
 - (ii) the issuer reasonably believes is;****an accredited investor as defined in 17 CFR 230.501(a).**
- (B) The issuer complies with the requirements in section 2.6 of this chapter.**
- (C) The issuer:**
 - (i) reasonably believes that all purchasers are purchasing for investment; and**
 - (ii) is not selling or offering to sell the security with the view to or for sale in connection with a distribution of the security.**

If a security is resold within twelve (12) months after the date that the security was sold in reliance on the exemption under this subdivision, the sale of the security in reliance on this exemption is presumed to be with a view to distribution and not for investment. However, the presumption does not apply to a security resold under a registration statement effective under IC 23-19-3-4 or IC 23-19-3-5 or to an accredited investor under an exemption available under this section.

SECTION 2. IC 23-19-2-2.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2.4. (a) As used in this section, "person associated with the issuer" includes the following:

- (1) A predecessor of an issuer.**
- (2) An issuer affiliated with the issuer.**
- (3) A director, an officer, or a general partner of the issuer.**
- (4) A beneficial owner of at least ten percent (10%) of any class of the issuer's equity securities.**
- (5) A promoter presently connected with the issuer in any capacity.**
- (6) An underwriter of the securities of the issuer that are to be offered.**
- (7) A partner, a director, or an officer of an underwriter described in subdivision (6).**

(b) A transaction described in section 2(26) of this chapter is not exempt under section 2(26) of this chapter if:

- (1) the issuer of the security or a person associated with the issuer:**
 - (A) has, within the past five (5) years, filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities**



administrator or the Securities and Exchange Commission;
 (B) has, within the past five (5) years, been convicted of any criminal offense:

- (i) in connection with the offer, purchase, or sale of any security; or
- (ii) involving fraud or deceit;

(C) is currently subject to any state or federal administrative enforcement order or judgment, entered within the past five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or

(D) is currently subject to any order, judgment, or decree of any court with jurisdiction, entered within the past five (5) years, temporarily, preliminarily, or permanently restraining or enjoining the issuer or a person associated with the issuer from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security; and

(2) one (1) or more of the following do not apply:

(A) The issuer of the security or a person associated with the issuer described in subdivision (1) is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification of the exemption was entered against the issuer of the security or a person associated with the issuer.

(B) Before the first offer of a security in reliance on the exemption in section 2(26) of this chapter, the:

- (i) state securities administrator; or
- (ii) court or regulatory authority that entered the order, judgment, or decree waived;

the disqualification of the exemption.

(C) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification of the exemption existed under this subsection.

(c) A transaction described in section 2(26) of this chapter is not exempt under section 2(26) of this chapter if the issuer of the security is in the development stage of the issuer's business and:

- (1) does not have a specific business plan or purpose; or
- (2) has indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company, companies, entity, or other person.

SECTION 3. IC 23-19-2-2.6 IS ADDED TO THE INDIANA CODE



AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 2.6. (a) This section applies only to the sale of or offer to sell a security in reliance on the exemption under section 2(26) of this chapter.**

(b) A general announcement of a proposed offering of securities may be made by any means.

(c) Except as provided in subsection (d), a general announcement described in subsection (b) may include only the following information unless additional information is specifically permitted by the commissioner:

(1) The name, address, and telephone number of the issuer of the securities.

(2) The name and a brief description and price, if known, of any security to be issued.

(3) A brief description of the business of the issuer in less than twenty-six (26) words.

(4) The type, number, and aggregate amount of securities being offered.

(5) The name, address, and telephone number of the person to contact for additional information.

(6) A statement that:

(A) sales will be made only to accredited investors;

(B) no money or other consideration is being solicited or will be accepted by way of the general announcement; and

(C) the securities:

(i) have not been registered with or approved by any state securities agency or the Securities and Exchange Commission; and

(ii) are being offered and sold pursuant to an exemption from registration.

(d) An issuer, in connection with an offer to sell a security in reliance on the exemption under section 2(26) of this chapter, may provide information in addition to the general announcement described in subsection (c) if one (1) or more of the following apply:

(1) The information is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors.

(2) The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(e) The issuer may not make solicitations by telephone for the



sale of or offer to sell securities in reliance on the exemption under section 2(26) of this chapter unless before placing the telephone call the issuer reasonably believes that the prospective purchaser the issuer will be soliciting is an accredited investor.

(f) Any dissemination of the general announcement of the proposed offering described in this section does not disqualify the issuer from claiming the exemption under section 2(26) of this chapter.

(g) The issuer shall file with the securities division a:

- (1) Model Accredited Investor Exemption Uniform Notice of Transaction, along with a consent to service of process; and
- (2) copy of the general announcement;

not later than fifteen (15) days after the first sale of the security in Indiana.

SECTION 4. IC 23-19-7-5, AS ADDED BY P.L.85-2012, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. As used in this chapter, "monetary sanction" refers to money required to be paid under this article as the result of a judicial or an administrative action, including any penalties imposed or amounts ordered through an order of ~~restitution~~ or disgorgement. **However, the term does not include any amounts ordered or identified as restitution.**



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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